IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.281 OF 2003

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Union of India ...Petitioner

v/s

M/s.Kamal Constructions & ors. ...Respondents

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Mr.Suresh Kumar for the Petitioner.

Mr.G.L.Masand for the Respondents.

CORAM: D.K.DESHMUKH, J.

DATED: 19TH JULY,2005

P.C.:

1. By this petition the Petitioner challenges the

award made by the sole arbitrator dated 19th December, 2002.

2. By the award impugned in the petition, the learned arbitrator has awarded Rs.10,400/- towards claim No.1, which was refund of security deposit. The arbitrator has awarded Rs.41,409.42 against claim No.2 for loss of profit, Rs.1,00,000/- against claim No.3 for underutilization of resources, Rs.42,000/- against claim No.4 for extra expenses on overheads during prolonged period and interest at the rate of 15% p.a. has been awarded from 28-4-2000 till the date of the award.

3. So far as the amounts awarded against claim Nos. 1 & 2 are concerned, I do not find any material produced on record by the Railways to show that the reasons given in the award that the failure of the Railways to take the initial levels prevented the claimant from starting the work is wrong. Therefore, in my opinion, the amounts awarded against claims Nos. 1 & 2 cannot be disturbed. However, so far as amounts awarded against claim Nos. 3 & 4 are concerned, it appears that there is no material considered by the learned arbitrator for recording

the finding. Though the learned arbitrator has awarded Rs.1,00,000/- for underutilization of the resources, perusal of the award does not show as to what were the resources mobilised by the claimant for performing the contract. The award also does not show that the claimant had produced any material before the learned arbitrator, which was considered by the learned arbitrator to show that the resources were mobilised by the Respondent for carrying out the work and those resources remained unutilised. As the finding recorded by the arbitrator in this regard is a finding without considering the evidence on record, finding against claim No.3 , in my opinion, is liable to be set aside. So far as the finding recorded in relation to claim No.4 is concerned, again the award does not show that the Respondent had produced any evidence on record that he has actually incurred any expenses on overheads. I do not see any consideration of any document by the learned arbitrator in arriving at the amount of Rs.42,000/- which is awarded against this claim. Therefore, the amount awarded against claim No. 4 could not have been awarded, and therefore, the award made against claim Nos. 3 & 4 is liable to be set aside. It is accordingly set aside.

4. So far as the interest claim i.e. claim No.6 is concerned, according to the Petitioner, according to terms of the contract interest could not have been awarded till the date of the award. However, there is a dispute between the parties as to which were the general conditions of the contract which were applicable to the contract in question. I do not find from the award that this question was raised before the learned arbitrator. Therefore, in my opinion, it will not be proper to consider that question for the first time by this court. Therefore, I find no reason to disturb the award made against this claim.

5. In the result, therefore, the petition succeeds in part. Sums awarded against claim Nos. 3 & 4 are set aside. Award is modified to that extent. Petition disposed of.

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